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By: **Senators Miller, Astle, Britt, Currie, Della, Forehand, Frosh, Garagiola, Giannetti, Gladden, Grosfeld, Hogan, Hollinger, Kelley, Klausmeier, McFadden, Middleton, Pinsky, Stone, and Teitelbaum**

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Assigned to: Finance

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 19, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurance - People's Insurance Counsel**

3 FOR the purpose of providing for the appointment, term of office, qualifications, and  
4 salary of the People's Insurance Counsel; requiring the People's Insurance  
5 Counsel to take a certain oath; requiring the State budget to provide certain  
6 money for the Office of People's Insurance Counsel to hire necessary staff;  
7 authorizing the Office of People's Insurance Counsel to retain or hire certain  
8 experts; requiring the People's Insurance Counsel to administer and operate the  
9 Office of People's Insurance Counsel; establishing the People's Insurance  
10 Counsel Fund; requiring the Maryland Insurance Commissioner to collect a  
11 certain assessment from certain health insurers, life insurers, and property and  
12 casualty insurers and deposit the amounts collected into the People's Insurance  
13 Counsel Fund; establishing the duties of the Office of People's Insurance  
14 Counsel; establishing certain rights of the Office of People's Counsel in  
15 appearances before the Commissioner and courts on behalf of insurance  
16 consumers; authorizing the Office of People's Insurance Counsel to appear  
17 before any unit of State or federal government to protect the interests of  
18 insurance consumers; providing that the Office of People's Insurance Counsel  
19 shall have full access to certain records under certain circumstances; providing  
20 that the Office of People's Insurance Counsel is entitled to the assistance of  
21 certain staff under certain circumstances; authorizing the Office of People's  
22 Insurance Counsel to recommend certain legislation to the General Assembly;  
23 requiring the Office of People's Insurance Counsel to report on its activities to  
24 the Governor and the General Assembly on or before a certain date each year;  
25 defining certain terms; requiring the Governor to process a certain budget  
26 amendment; and generally relating to the People's Insurance Counsel.

1 BY adding to  
2 Article - Insurance  
3 Section 2-601 through 2-608, inclusive, to be under the new subtitle "Subtitle 6.  
4 People's Insurance Counsel"  
5 Annotated Code of Maryland  
6 (2003 Replacement Volume)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Insurance**

10 **SUBTITLE 6. PEOPLE'S INSURANCE COUNSEL.**

11 2-601.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
13 INDICATED.

14 (B) (1) "HEALTH INSURER" MEANS AN INSURER THAT HOLDS A  
15 CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER TO ENGAGE IN THE  
16 BUSINESS OF HEALTH INSURANCE.

17 (2) "HEALTH INSURER" INCLUDES:

18 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER  
19 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,  
20 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

21 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER  
22 TITLE 14, SUBTITLE 1 OF THIS ARTICLE; AND

23 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF  
24 THIS ARTICLE.

25 (C) "INSURANCE CONSUMERS" MEANS PERSONS INSURED UNDER POLICIES  
26 OR CONTRACTS OF HEALTH INSURANCE, LIFE INSURANCE, OR PROPERTY AND  
27 CASUALTY INSURANCE ISSUED OR DELIVERED IN THE STATE BY A HEALTH INSURER,  
28 LIFE INSURER, OR PROPERTY AND CASUALTY INSURER.

29 (D) (1) "INSURER" MEANS AN INSURER OR OTHER ENTITY AUTHORIZED TO  
30 ENGAGE IN THE INSURANCE BUSINESS IN THE STATE UNDER A CERTIFICATE OF  
31 AUTHORITY ISSUED BY THE COMMISSIONER.

32 (2) "INSURER" INCLUDES:

33 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER  
34 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,  
35 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

1 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER  
2 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;

3 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF  
4 THIS ARTICLE; AND

5 (IV) THE MARYLAND AUTOMOBILE INSURANCE FUND.

6 (E) "LIFE INSURER" MEANS AN INSURER THAT HOLDS A CERTIFICATE OF  
7 AUTHORITY ISSUED BY THE COMMISSIONER TO ENGAGE IN THE BUSINESS OF LIFE  
8 INSURANCE.

9 (F) (1) "PREMIUM" HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE  
10 TO THE EXTENT IT IS ALLOCABLE TO THIS STATE.

11 (2) "PREMIUM" INCLUDES ANY AMOUNTS PAID TO A HEALTH  
12 MAINTENANCE ORGANIZATION AS COMPENSATION ON A PREDETERMINED BASIS  
13 FOR PROVIDING SERVICES TO MEMBERS AND SUBSCRIBERS AS SPECIFIED IN TITLE  
14 19, SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE TO THE EXTENT IT IS  
15 ALLOCABLE TO THIS STATE.

16 (G) (1) "PROPERTY AND CASUALTY INSURER" MEANS AN INSURER THAT  
17 HOLDS A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER TO ENGAGE  
18 IN THE BUSINESS OF PROPERTY AND CASUALTY INSURANCE.

19 (2) "PROPERTY AND CASUALTY INSURER" INCLUDES THE MARYLAND  
20 AUTOMOBILE INSURANCE FUND.

21 2-602.

22 (A) THE GOVERNOR SHALL APPOINT THE PEOPLE'S INSURANCE COUNSEL  
23 WITH THE ADVICE AND CONSENT OF THE SENATE.

24 (B) (1) THE TERM OF OFFICE OF THE PEOPLE'S INSURANCE COUNSEL IS 3  
25 YEARS.

26 (2) THE GOVERNOR MAY REMOVE THE PEOPLE'S INSURANCE COUNSEL  
27 FOR INCOMPETENCE, MISCONDUCT, OR OTHER GOOD CAUSE.

28 (C) THE PEOPLE'S INSURANCE COUNSEL:

29 (1) SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN THE STATE;

30 (2) SHALL HAVE KNOWLEDGE OF AND EXPERTISE IN THE INSURANCE  
31 BUSINESS; AND

32 (3) MAY NOT HOLD AN OFFICIAL RELATION TO OR HAVE ANY  
33 PECUNIARY INTEREST IN AN INSURER.

34 (D) BEFORE TAKING OFFICE, THE PEOPLE'S INSURANCE COUNSEL SHALL  
35 TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

1 (E) THE PEOPLE'S INSURANCE COUNSEL SHALL DEVOTE FULL TIME TO THE  
2 DUTIES OF OFFICE.

3 (F) THE PEOPLE'S INSURANCE COUNSEL IS ENTITLED TO A SALARY AS  
4 PROVIDED IN THE STATE BUDGET.

5 2-603.

6 (A) THE STATE BUDGET SHALL PROVIDE SUFFICIENT MONEY FOR THE  
7 OFFICE OF PEOPLE'S INSURANCE COUNSEL TO HIRE NECESSARY STAFF.

8 (B) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL MAY RETAIN AS  
9 NECESSARY FOR A PARTICULAR MATTER OR HIRE EXPERTS IN THE FIELD OF  
10 INSURANCE REGULATION, INCLUDING ACCOUNTANTS, ACTUARIES, AND LAWYERS.

11 (C) THE PEOPLE'S INSURANCE COUNSEL SHALL ADMINISTER AND OPERATE  
12 THE OFFICE OF PEOPLE'S INSURANCE COUNSEL.

13 2-604.

14 (A) THE COMMISSIONER SHALL:

15 (1) COLLECT AN ANNUAL ASSESSMENT FROM EACH HEALTH INSURER,  
16 LIFE INSURER, AND PROPERTY AND CASUALTY INSURER FOR THE COSTS AND  
17 EXPENSES INCURRED BY THE OFFICE OF PEOPLE'S INSURANCE COUNSEL IN  
18 CARRYING OUT ITS DUTIES UNDER THIS SUBTITLE; AND

19 (2) DEPOSIT THE AMOUNTS COLLECTED INTO THE PEOPLE'S  
20 INSURANCE COUNSEL FUND ESTABLISHED IN § 2-605 OF THIS SUBTITLE.

21 (B) THE ASSESSMENT PAYABLE BY A HEALTH INSURER, LIFE INSURER, OR  
22 PROPERTY AND CASUALTY INSURER IS THE PRODUCT OF THE FRACTION OBTAINED  
23 BY DIVIDING THE GROSS DIRECT PREMIUM WRITTEN BY THE HEALTH INSURER, LIFE  
24 INSURER, OR PROPERTY AND CASUALTY INSURER IN THE PRIOR CALENDAR YEAR BY  
25 THE TOTAL AMOUNT OF GROSS DIRECT PREMIUM WRITTEN BY ALL HEALTH  
26 INSURERS, LIFE INSURERS, AND PROPERTY AND CASUALTY INSURERS IN THE PRIOR  
27 CALENDAR YEAR, MULTIPLIED BY THE AMOUNT OF THE TOTAL COSTS AND  
28 EXPENSES UNDER SUBSECTION (A)(1) OF THIS SECTION.

29 2-605.

30 (A) IN THIS SECTION, "FUND" MEANS THE PEOPLE'S INSURANCE COUNSEL  
31 FUND.

32 (B) THERE IS A PEOPLE'S INSURANCE COUNSEL FUND.

33 (C) THE PURPOSE OF THE FUND IS TO PAY ALL COSTS AND EXPENSES  
34 INCURRED BY THE OFFICE OF PEOPLE'S INSURANCE COUNSEL IN CARRYING OUT ITS  
35 DUTIES UNDER THIS SUBTITLE.

36 (D) THE FUND SHALL CONSIST OF:

1 (1) ALL REVENUE DEPOSITED INTO THE FUND THAT IS RECEIVED  
2 THROUGH THE IMPOSITION AND COLLECTION OF THE ASSESSMENT UNDER § 2-604  
3 OF THIS SUBTITLE; AND

4 (2) INCOME FROM INVESTMENTS THAT THE STATE TREASURER MAKES  
5 FOR THE FUND.

6 (E) (1) EXPENDITURES FROM THE FUND TO COVER THE COSTS AND  
7 EXPENSES INCURRED BY THE OFFICE OF PEOPLE'S INSURANCE COUNSEL IN  
8 CARRYING OUT ITS DUTIES UNDER THIS SUBTITLE MAY BE MADE ONLY:

9 (I) WITH AN APPROPRIATION FROM THE FUND APPROVED BY THE  
10 GENERAL ASSEMBLY IN THE ANNUAL STATE BUDGET; OR

11 (II) BY THE BUDGET AMENDMENT PROCEDURE PROVIDED FOR IN §  
12 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

13 (2) (I) IF, IN ANY GIVEN FISCAL YEAR, THE AMOUNT OF THE  
14 ASSESSMENT REVENUE COLLECTED BY THE COMMISSIONER AND DEPOSITED INTO  
15 THE FUND EXCEEDS THE ACTUAL COSTS AND EXPENSES INCURRED BY THE OFFICE  
16 OF ~~PEOPLE'S~~ PEOPLE'S INSURANCE COUNSEL TO CARRY OUT ITS DUTIES UNDER  
17 THIS SUBTITLE, THE EXCESS AMOUNT SHALL BE CARRIED FORWARD WITHIN THE  
18 FUND FOR THE PURPOSE OF REDUCING THE ASSESSMENT IMPOSED BY THE  
19 COMMISSIONER FOR THE FOLLOWING FISCAL YEAR.

20 (II) IF, IN ANY GIVEN FISCAL YEAR, THE AMOUNT OF THE  
21 ASSESSMENT REVENUE COLLECTED BY THE COMMISSIONER AND DEPOSITED INTO  
22 THE FUND IS INSUFFICIENT TO COVER THE ACTUAL EXPENDITURES INCURRED BY  
23 THE OFFICE OF PEOPLE'S INSURANCE COUNSEL TO CARRY OUT ITS DUTIES UNDER  
24 THIS SUBTITLE BECAUSE OF AN UNFORESEEN EMERGENCY, AND EXPENDITURES  
25 ARE MADE IN ACCORDANCE WITH THE BUDGET AMENDMENT PROCEDURE  
26 PROVIDED FOR IN § 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, AN  
27 ADDITIONAL ASSESSMENT MAY BE MADE.

28 (F) (1) THE STATE TREASURER IS THE CUSTODIAN OF THE FUND.

29 (2) THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME  
30 MANNER AS STATE FUNDS.

31 (3) THE STATE TREASURER SHALL DEPOSIT PAYMENTS RECEIVED FROM  
32 THE COMMISSIONER INTO THE FUND.

33 (G) (1) THE FUND IS A CONTINUING, NONLAPSING FUND AND IS NOT  
34 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, AND MAY  
35 NOT BE DEEMED A PART OF THE GENERAL FUND OF THE STATE.

36 (2) NO PART OF THE FUND MAY REVERT OR BE CREDITED TO:

37 (I) THE GENERAL FUND OF THE STATE; OR

1 (II) A SPECIAL FUND OF THE STATE, UNLESS OTHERWISE  
2 PROVIDED BY LAW.

3 2-606.

4 (A) (1) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL SHALL EVALUATE  
5 EACH MATTER PENDING BEFORE THE COMMISSIONER TO DETERMINE IF THE  
6 INTERESTS OF INSURANCE CONSUMERS ARE AFFECTED.

7 (2) IF THE OFFICE OF PEOPLE'S INSURANCE COUNSEL CONSIDERS THE  
8 INTERESTS OF INSURANCE CONSUMERS TO BE AFFECTED, THE OFFICE OF PEOPLE'S  
9 INSURANCE COUNSEL SHALL APPEAR BEFORE THE COMMISSIONER AND COURTS ON  
10 BEHALF OF INSURANCE CONSUMERS IN EACH MATTER OR PROCEEDING OVER  
11 WHICH THE COMMISSIONER HAS ORIGINAL JURISDICTION.

12 (B) (1) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL SHALL REVIEW ANY  
13 PROPOSED RATE INCREASE OF 10% OR MORE FILED WITH THE COMMISSIONER BY A  
14 HEALTH INSURER, LIFE INSURER, OR PROPERTY AND CASUALTY INSURER.

15 (2) IF THE OFFICE OF PEOPLE'S INSURANCE COUNSEL FINDS THAT THE  
16 PROPOSED RATE INCREASE IS EXCESSIVE OR OTHERWISE ADVERSE TO THE  
17 INTERESTS OF INSURANCE CONSUMERS, THE OFFICE OF PEOPLE'S INSURANCE  
18 COUNSEL SHALL APPEAR BEFORE THE COMMISSIONER ON BEHALF OF INSURANCE  
19 CONSUMERS IN ANY HEARING ON THE RATE FILING.

20 (C) AS THE OFFICE OF PEOPLE'S INSURANCE COUNSEL CONSIDERS  
21 NECESSARY, THE OFFICE OF PEOPLE'S INSURANCE COUNSEL SHALL CONDUCT  
22 INVESTIGATIONS AND REQUEST THE COMMISSIONER TO INITIATE PROCEEDINGS TO  
23 PROTECT THE INTERESTS OF INSURANCE CONSUMERS.

24 2-607.

25 (A) IN APPEARANCES BEFORE THE COMMISSIONER AND COURTS ON BEHALF  
26 OF INSURANCE CONSUMERS, THE OFFICE OF PEOPLE'S INSURANCE COUNSEL HAS  
27 THE RIGHTS OF COUNSEL FOR A PARTY TO THE PROCEEDING, INCLUDING THE RIGHT  
28 TO:

29 (1) ADMINISTER OATHS;

30 (2) EXAMINE INDIVIDUALS UNDER OATH; AND

31 (3) ISSUE SUBPOENAS FOR THE ATTENDANCE OF WITNESSES TO  
32 TESTIFY OR THE PRODUCTION OF EVIDENCE.

33 (B) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL MAY APPEAR BEFORE  
34 ANY FEDERAL OR STATE UNIT TO PROTECT THE INTERESTS OF INSURANCE  
35 CONSUMERS.

36 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE AND  
37 CONSISTENT WITH ANY APPLICABLE FREEDOM OF INFORMATION ACT, THE OFFICE

1 OF PEOPLE'S INSURANCE COUNSEL SHALL HAVE FULL ACCESS TO THE  
2 COMMISSIONER'S RECORDS, INCLUDING RATE FILINGS AND SUPPLEMENTARY RATE  
3 INFORMATION FILED WITH THE COMMISSIONER UNDER TITLE 11 OF THIS ARTICLE,  
4 AND SHALL HAVE THE BENEFIT OF ALL OTHER FACILITIES OR INFORMATION OF THE  
5 COMMISSIONER.

6 (2) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL IS ENTITLED TO  
7 THE ASSISTANCE OF THE COMMISSIONER'S STAFF, IF THE STAFF DETERMINES THAT  
8 THE ASSISTANCE IS CONSISTENT WITH THE STAFF'S RESPONSIBILITIES AND IF THE  
9 STAFF AND THE OFFICE OF PEOPLE'S INSURANCE COUNSEL AGREE THAT THE  
10 ASSISTANCE, IN A PARTICULAR MATTER, IS CONSISTENT WITH THEIR RESPECTIVE  
11 INTERESTS.

12 (D) THE OFFICE OF PEOPLE'S INSURANCE COUNSEL MAY RECOMMEND TO  
13 THE GENERAL ASSEMBLY LEGISLATION ON ANY MATTER THAT THE OFFICE OF  
14 PEOPLE'S INSURANCE COUNSEL CONSIDERS WOULD PROMOTE THE INTERESTS OF  
15 INSURANCE CONSUMERS.

16 2-608.

17 ON OR BEFORE JANUARY 1 OF EACH YEAR, THE OFFICE OF PEOPLE'S  
18 INSURANCE COUNSEL SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE  
19 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY  
20 ON THE ACTIVITIES OF THE OFFICE OF PEOPLE'S INSURANCE COUNSEL DURING THE  
21 PRIOR FISCAL YEAR.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall  
23 process a budget amendment in accordance with § 7-209 of the State Finance and  
24 Procurement Article for \$1,000,000 in special funds for the purpose of establishing  
25 and operating the Office of People's Insurance Counsel.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2004.